

**STATE OF MAINE  
DEPARTMENT OF BEHAVIORAL AND DEVELOPMENTAL SERVICES  
MENTAL RETARDATION SERVICES**

**14-197 CMR 9**

**REPORTING, INVESTIGATION AND REVIEW OF  
REPORTABLE EVENTS**

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**Statutory Authority:** 18-A M.R.S.A. §§ 5-312, 5-601, 5-606, 5-607  
22 M.R.S.A. §§ 3470-3492, 7921-24  
34-B M.R.S.A. §§ 1205, 3803, 3832, 5003, 5203, 5480, 5601-06

**Regulatory Authority:** 14 – Department of Behavioral and Developmental Services  
(formerly Department of Mental Health, Mental Retardation and  
Substance Abuse Services)

197 - Mental Retardation Services (formerly Bureau of Mental  
Retardation)

CHAPTER 6 - Regulations Governing Adult Protective  
Assessments & Investigations for Persons with Mental Retardation  
or Autism

**1. GENERAL STATEMENT OF POLICY & PURPOSE**

It is the policy of the Department of Behavioral and Developmental Services (BDS) that adults with mental retardation or autism shall enjoy the same rights as other citizens, while at the same time be protected from abuse, neglect, and exploitation. The goal of services is to mobilize the individual's own strengths and to utilize whatever resources are available in the community in order to improve the person's ability to function and to live his/her life in safety and dignity, with as much satisfaction, enjoyment and comfort as possible. Safety, welfare, rights and dignity are the foundation of the system of supports for adults with mental retardation and autism.

In order to safeguard those rights, it is the purpose of this rule to identify the manner in which deviations from this standard shall be reported to BDS, investigated, and reviewed, with the concurrent goal of utilizing this information to prevent and correct problems in the service delivery system and reduce the risk of recurrence. BDS has the statutory authority to provide Adult Protective Services for adults with mental retardation and autism including review and investigation. [22 M.R.S.A. § 3472]

This rule establishes uniform procedures and forms for documenting, reporting, investigating and reviewing events that have or may have an adverse impact upon the safety, welfare, rights or dignity of adults with mental retardation or autism.

**Applicability:** This rule applies to staff of BDS, the Office of Advocacy and to individuals and agencies providing residential, day habilitation or employment services that are licensed, funded or regulated by BDS.

## **2. DEFINITION OF REPORTABLE EVENTS:**

“Reportable Events” are events that happen to adults with mental retardation or autism that have or may have an adverse impact upon the safety, welfare, rights or dignity of adults with mental retardation or autism.

Reportable Events include, but are not limited to, the following:

**A. *Abuse, Mistreatment, Exploitation, or Neglect:*** These are defined as follows:

(1) **“Abuse”** includes the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs of an adult with mental retardation or autism. Injuries need not be intentionally inflicted to be reportable, and need not leave visible marks or bruises.

(2) **“Mistreatment”** is any action adversely impacting an adult with mental retardation or autism that is not in keeping with established norms or standards of care. These norms include licensing, statutory or regulatory standards, and also include reasonable professional standards for the delivery of care and support. For example, treatment that is not part of an approved treatment plan may constitute mistreatment.

(3) **“Exploitation”** means the illegal or improper use of an adult with mental retardation or autism or the adult's resources for another's profit or advantage. It includes taking advantage of or using an individual's limitations to illegally, improperly, or unfairly deprive him/her of money, property, or reimbursement, wages, or compensation due. Some examples of exploitation are: using a person to do work for you without paying a fair wage; manipulating an aggressive individual into hurting someone; offering to give a person who does not understand the value of money TWO one dollar bills in exchange for ONE twenty dollar bill; or pressuring a person with limited understanding to promote a political agenda.

(4) **“Neglect”** means a threat to the health or welfare of an adult with mental retardation or autism by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. Neglect includes the failure by a provider agency to do a duty that is a work expectation. For example, if an individual is in your care and requires assistance to change wet clothing, failing to assist him/her in a timely fashion is neglect. Neglect also includes failure to provide:

- adequate shelter, clothes, food and water
- emotional support when needed
- personal care

- medical attention or necessary medication
- glasses, dentures, hearing aids, walkers, etc.

Neglect also includes situations where a caregiver is under the influence of drugs or alcohol at the time s/he is providing care, or when the caregiver is emotionally distraught to the extent that s/he is unable to meet the needs of the person served. Neglect also includes failure to address dangerous situations that could hurt an adult with mental retardation or autism, such as failing to cordon off areas where there is falling ice or broken stairs.

(5) **“Sexual Abuse or Exploitation”** means contact or interaction of a sexual nature, including exposure to pornographic materials, involving an adult with mental retardation or autism who does not have the capacity to consent, or, if capable of consent, did not consent. Sexual activity between a dependent person and a paid provider agency of service, whether consensual or not, constitutes sexual abuse.

(6) **“Verbal Abuse”** means any verbalization that inflicts or may cause emotional harm, invokes fear and/or humiliates, intimidates, degrades or demeans an adult with mental retardation or autism, or otherwise coerces an adult with mental retardation or autism to do something through the threat of force.

**B. Assault:** Any hitting, slapping, kicking, biting or other contact against an adult with mental retardation or autism characterized by the recipient as unwanted or, in the case of a person deemed incapacitated by the Probate Court, all such contact. Any assault by a staff person of an agency or provider agency upon a person with mental retardation or autism is defined as abuse under paragraph A(1). If an incident involves a person with mental retardation or autism assaulting another person with mental retardation or autism, then two separate reportable incidents have occurred and separate reports must be filed for each person.

**C. Dangerous Situations:** Any act or situation that endangers an adult with mental retardation or autism, including dangers that have been ignored or uncorrected. Actual harm or injury need not occur. Examples include malfunctions of equipment such as Hoyer lifts or wheelchairs that continue to be used even though they are dangerous, people darting into a busy street, or grabbing the steering wheel in a moving car.

**D. Death:** Every death of an adult with mental retardation or autism must be immediately reported, regardless of cause.

**E. Emergency Services:** Any use of law enforcement, fire, rescue, or crisis service impacting an adult with mental retardation or autism must be reported.

**F. Serious Injury or Illness:** Serious or significant injuries or illnesses of an adult with mental retardation or autism must be reported. These include any change in medical conditions caused by accident or illness that requires hospitalization; non-routine treatment not identified in the person’s plan; significant adverse reactions to medication; sexually transmitted diseases; etc.

**G. *Licensing Violations:*** Violations of State or Federal health, safety or rights regulations or rules adversely impacting an adult with mental retardation or autism must be reported both to BDS and to the applicable licensing authority.

**H. *Lost or Missing Person:*** An adult with mental retardation or autism is lost or missing when s/he cannot be located after a reasonable time and after reasonable inquiry and no information exists as to the individual's whereabouts. When a person is determined to be lost or missing, the Mental Retardation Crisis Program must be notified immediately, along with local law enforcement.

**I. *Medication Error or Refusal:*** "Medication error" includes wrong person, wrong dose, wrong medication, wrong time (over one hour variance), wrong route, wrong method of administration or omission. "Medication refusal" is any circumstance in which staff has knowledge of a client (including a self-medicating client) who does not take the medications as prescribed.

**J. *Medical Orders Involving Persons under Guardianship:*** Current law provides that a guardian must be notified and approve of new, changed, or additional medical orders including changes in medications and DNR orders. Implementation of new orders may not occur until approved by a representative of the guardian. Failure to obtain consent to a change in a medical order for a person under guardianship must be reported.

**K. *Medication Missing:*** Missing medications of an adult with mental retardation or autism that suggest the possibility of theft must be reported. This includes a pattern of missing medications, or a significant amount of missing medications, especially Schedule II drugs.

**L. *Physical Plant Disasters:*** "Physical plant disasters" include any unplanned situation that adversely impacts an adult with mental retardation or autism and forces the closure of a home or program site for one or more days. This includes any fire, or other situation that requires the active involvement of fire personnel or personnel such as HAZMAT Team, Code Enforcement, or other health or safety officials. This category does not apply to individuals who reside in the home of a family member.

**M. *Restraint:*** Personal/physical/chemical or other restraints used on an adult with mental retardation or autism that are not part of an approved plan. Restraints are defined as any intervention that deprives an adult with mental retardation or autism of the use of all or any part of the individual's body, except for safety positioning. Improper or unauthorized use of restraint on an adult with mental retardation or autism is considered abuse and is to be reported as such.

**N. *Rights Violations:*** Adults with mental retardation and/or autism have rights that are set forth at 34-B M.R.S.A. 5605. Any violations of these rights **must** be reported as set forth herein.

**O. *Mechanical devices and supports:*** Mechanical devices and supports are devices that:

- (1) restrict a person's movement or contact with their own body, to promote safety or to achieve proper body position and balance, and
- (2) if not medically ordered, would be defined as a restraint.

Examples of such devices include mitts, posey belts and bedrails. Seat belts, when riding in a motor vehicle, are not considered restraints since they are required by state law for everyone riding or driving in a motor vehicle.

All mechanical devices and supports used on an adult with mental retardation or autism must be applied under the supervision of a qualified professional and be an approved part of a treatment plan. Any use of a mechanical device or support that is not an approved part of a treatment plan or applied under the supervision of a qualified professional must be reported. For example, a tray table attached to a chair or wheelchair is a restraint if imposed for the purpose of limiting the free movement of an adult with mental retardation or autism.

**P. *Suicide Attempts, Threats, and Self-injurious Behaviors:*** Suicide attempts and threats by an adult with mental retardation or autism must be reported and self-injurious behaviors that are not addressed and tracked as part of a formal plan must be reported. Self-injurious behaviors need not result in obvious injuries or marks. Report pica (ingestion of inedibles) as self-injurious activity.

### **3. GENERAL DEFINITIONS**

**A. *Agency or provider agency:*** An organization or individual providing services to adults with mental retardation or autism, funded in whole or in part, licensed/certified or otherwise authorized by the Department. A large provider agency is any provider agency of services to adults with mental retardation or autism with 25 or more employees that is licensed, funded or regulated in whole or in part by BDS. A small provider agency is any provider agency of services to adults with mental retardation or autism with fewer than 25 employees that is licensed, funded or regulated in whole or in part by BDS.

**B. *Dependent Adult:*** Any adult who is wholly or partially dependent upon one or more other individuals for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.

**C. *Incapacitated Adult:*** Any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the adult lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the adult's personal welfare, or to the extent the adult cannot effectively manage or apply his/her estate to necessary ends. [Use definition from statute]

**D. *Individual Support Coordinator (ISC):*** A Regional employee of the Department's Mental Retardation Services Program who provides case management services to a person with mental retardation or autism.

**E. *Informed consent:*** Consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

#### **4. WHO MUST REPORT**

Anyone with knowledge of a reportable event should report to BDS. Persons required to report under this rule include all individuals, staff of agencies, subcontractors and volunteers who provide residential, day, employment or other services to adults with mental retardation or autism and who are licensed, funded, or regulated in whole or in part by BDS. Nothing in this rule relieves mandated reporters of their responsibility to report suspected abuse or neglect to the Department of Human Services, the District Attorney, the Chief Medical Examiner and/or law enforcement as required by law.

#### **5. WHEN, WHERE AND HOW TO REPORT**

Immediately upon identification or notification of an incident reportable under this rule, provider agencies must take all reasonable measures to ensure the health and safety of all individuals served including immediate and on going medical attention as appropriate, removal of an employee from direct contact when the employee is subject to an allegation of abuse until such time as it is determined that such removal is no longer necessary, and other measures as necessary to protect the health and safety of individuals served.

All events reportable pursuant to this rule must be reported to BDS. Such reports must be made within the following time frames:

**A. *The following reports must be made immediately:***

- Abuse, exploitation, or neglect of a person
- Death
- Serious illness or injury
- Rights violations
- Lost or missing person
- Assaults
- Suicide attempts or threats
- Dangerous situations that pose an imminent risk of harm

**B. *All other events must be reported within one business day unless:*** 1) the event requires an immediate response by BDS (such as immediate action by Crisis Services staff); or (2) immediate reporting is required by law.

#### **6. AGENCY POLICIES AND PROCEDURES; APPROVED INVESTIGATORS**

### ***A. Large Provider Agencies:***

Large provider agencies must maintain written policies and procedures requiring staff to report events under this rule. The provider agency's written policies and procedures must be consistent with federal and state law, as well as this rule and the accompanying procedures. Provider agency policies must make clear that failure to report events may lead to administrative or disciplinary action. Provider agencies must ensure that their employees and those who support the provider agency are trained in reporting policies and procedures.

Large provider agencies must under contract or agreement with BDS have at least one approved investigator employed by their agency. The employee may have other functions or responsibilities within the provider agency. BDS will approve an agency investigator when such person meets the criteria established by the Department. Approval may be withdrawn when the Department determines it to be in the best interests of the Department and its legal responsibilities to its clients to withdraw approval. In such cases the agency will work cooperatively with the Department to secure approval of another employee within the agency within a reasonable time.

Provider agencies with approved investigators must have written protocols for:

- (1) Participation in investigations, as directed by the Adult Protective Services (APS) Unit;
- (2) Internal administrative review of events that do not require a formal investigation but that must be internally reviewed and acted upon in order to protect the health, safety, and rights of persons served by the agency; and
- (3) Participation in rights violation investigations in cooperation with the Office of Advocacy.

A copy of the agency's policy must be submitted to the APS unit within six months of the effective date of this rule. Within 30 days of filing, the APS unit will review the agency policy for sufficiency and consistency and notify the agency of its approval, based on the policy's sufficiency and consistency, or of its need for revision. Thereafter, the policy must be submitted as part of any service agreement or contract with BDS (new or renewal) on a yearly basis.

### ***B. Small Provider Agencies:***

Small provider agencies must comply with the reporting provisions of this rule but are not required under contract or agreement with BDS to have an approved investigator. A small provider agency may adopt this rule as its policy.

### ***C. Office of Advocacy Investigations***

All provider agencies, regardless of size, are also required to cooperate with any investigations of rights violations conducted by the Office of Advocacy.

## **7. DEPARTMENT RESPONSIBILITIES FOR RECEIVING AND REFERRING REPORTS**

Within BDS, each Regional Office shall identify a person or persons whose responsibilities include receiving and immediately logging reportable events. Once logged, the reported event will then be referred to the appropriate person or entity pursuant to a protocol established within BDS. All reportable events with the exception of medication errors and restraints will be forwarded for review to the Adult Protective Unit. Medication errors and restraints will be forwarded to and reviewed by the Individual Support Coordinator (ISC). If the ISC has concern about whether a particular restraint or medication error rises to the level of abuse or neglect, the concern must be brought to the attention of the APS unit immediately. All restraints and rights violations (including all incidents of abuse, exploitation, and neglect) will also be sent to the Office of Advocacy. The Quality Assurance Unit will review aggregate reports and search for trends that may need to be addressed by the agency or BDS.

Employees of each Regional Office will receive training and be familiar with this rule and the accompanying procedures.

## **8. RESPONSIBILITY FOR INVESTIGATIONS**

### ***A. Adult Protective Investigations***

An adult protective investigation must take place for all allegations of abuse, neglect or exploitation. When an event requires such an investigation, one of the following must occur:

- (1) The APS Unit will conduct the investigation; or
- (2) The APS Unit will conduct the investigation and request assistance from an approved agency investigator.

The decision of who will investigate the event is the responsibility of the APS Unit within BDS. In all cases BDS retains the right to appoint a separate BDS investigator or team to assess an event. The investigation may be conducted conjointly with an approved agency investigator or aspects of the investigation may be delegated to the approved agency investigator. The final approval of the investigation report remains the responsibility of the APS Unit.

### ***B. Office of Advocacy***

For all allegations of rights violations, the Office of Advocacy may conduct an investigation either directly or in cooperation with the APS investigator or an approved agency investigator.



### ***C. Other Reportable Events***

For all reportable events other than those covered in paragraphs 8.A. and 8.B., the provider agency shall conduct an administrative review. The review must attempt to identify the cause of an event and recommend preventative or corrective action as necessary. Findings must be reported to the APS unit within 30 days of the event. The APS unit will then either accept the results of the review and close the case, or request further action by the provider agency.

## **9. CONDUCTING INVESTIGATIONS; REPORTS**

Adult Protective Services investigations, whether conducted entirely by the Department's Adult Protective Unit or delegated to an approved agency investigator, will be conducted in accordance with regulations governing Adult Protective Assessments and Investigations for Persons with Mental Retardation and Autism. Procedures established by the agency will be consistent with this rule. All personnel of a provider agency of services licensed, funded or regulated by BDS shall cooperate fully with investigations conducted by the APS unit or the Office of Advocacy and make available all records that are relevant to the investigation.

Written results (or reports) of an investigation must be documented in a uniform way, which should include, at a minimum, a statement of the facts or allegations contained in the initial report; who was interviewed and the results of the interviews; what records were reviewed; an evaluation of the facts; conclusions; and recommendations. All final findings and recommendations of APS investigations and Administrative Reviews are the responsibility of the APS Unit. All final findings and recommendations of rights violations investigations are the responsibility of the Office of Advocacy. Findings and recommendations will be promptly submitted to the Commissioner, provider agency, guardian (except when the guardian is the subject of an investigation), ISC, BDS Regional Office, Office of Advocacy and Consumer Advisory Board.

## **10. FOLLOW-UP TO INVESTIGATIONS AND ADMINISTRATIVE REVIEWS**

Recommendations to protect individuals, as well as for preventative and corrective action, will be made by the Adult Protective Services Unit for all substantiated APS investigations and, as appropriate, for Administrative Reviews. The Office of Advocacy may also issue reports with recommendations to correct rights violations. All recommendations must be reviewed by the affected agencies and must be responded to by the agencies within 30 days of receipt of the recommendation. Recommendations from the APS Unit and/or Office of Advocacy regarding individuals or allegations unrelated to particular agencies must be reviewed and responded to by the BDS Regional Team Leader (with input from the Individual Support Coordinator and the MR supervisor) within 30 days of receipt of the report.

If necessary, further review will consist of discussion with the provider agency to elicit an agency-generated evaluation of the event and response including any changes in agency procedures that might improve overall support or care provided to clients. Whenever possible

and appropriate, interagency discussion of systemic barriers to optimal support and care will be encouraged, and suggestions for modifications to remove those barriers will be made.

As a result of its review of reports and recommendations, BDS may identify an individual or team to assess a particular event or series of events. The make-up of the review team will be determined by the Regional Management Team.

All documents created and maintained by or under the direction of the APS unit or the Office of Advocacy in compliance with this rule are records of BDS.

#### **11. QUALITY IMPROVEMENT REVIEWS - DEPARTMENTAL AND PROVIDER AGENCY RESPONSIBILITIES**

BDS and provider agencies will collect and maintain reportable event information as required by this rule. Reports of events will be aggregated and reviewed by Central Office staff monthly, and Quarterly Reports on this information may be disseminated to the Commissioner, provider agencies, BDS Regional Offices, Office of Advocacy, Adult Protective Unit Manager, and interested persons. These reports will also be used in accordance with BDS's Quality Improvement and Quality Assurance Policies.

If specific problem areas are identified through the quality improvement review, BDS may meet with the provider agency to discuss the problem area and the action steps necessary to address the problem.